

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA
TITLE III

Case No. 17-BK-3283-LTS

(Jointly Administered)

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**TENTH STATUS REPORT OF THE AVOIDANCE ACTIONS TRUSTEE
IN CONNECTION WITH THE COURT'S AVOIDANCE ACTION PROCEDURES**

Drivetrain, LLC (“Trustee”), in its capacity as the Trustee of the Commonwealth Avoidance Actions Trust, respectfully submits this tenth status report (“Tenth Status Report”) in compliance with Part III of the Court’s Avoidance Action Procedures [DE No. 20937, Appendix 2] (“Procedures”), and respectfully states as follows:

RELEVANT BACKGROUND

1. The Procedures require the Trustee to file a “brief update on the status of each Avoidance Action, including (as to each such action that remains pending at such time) whether

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK- 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK- 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

the parties are engaging in informal settlement discussions, the schedule established for mediation, and whether the Trustee expects the Avoidance Action to be litigated.” [Procedures, DE No. 20937, Appendix 2, Pt. III, § (i)].

2. In accordance with the Procedures, on September 20, 2022, the Trustee filed its first status report following the conclusion of the first one hundred and twenty (120) days of the Stay Period. [See DE No. 22331] (“First Status Report”). The Procedures require further status reports “every thirty (30) days thereafter.” On October 20, 2022, the Trustee filed its second status report in accordance with the Procedures. [See DE No. 22649] (“Second Status Report”). On November 18, 2022, the Trustee filed its third status report in accordance with the Procedures [See D.E. No. 22889] (“Third Status Report”). On December 19, 2022, the Trustee filed its fourth status report in accordance with the Procedures. [See D.E. No. 23111] (“Fourth Status Report”). On January 18, 2023, the Trustee filed its fifth status report in accordance with the Procedures. [See D.E. No. 23274] (“Fifth Status Report”).² On February 17, 2023, the Trustee filed its sixth status report in accordance with the Procedures. [See D.E. No. 23560] (“Sixth Status Report”). On March 17, 2023, the Trustee filed its seventh status report in accordance with the Procedures. [See D.E. No. 23827] (“Seventh Status Report”). On April 18, 2023, the Trustee filed its eighth status report in accordance with the Procedures. [See D.E. No. 24022] (“Eighth Status Report” and, collectively with each of the preceding reports, the “Prior Status Reports”). On May 18, 2023, the Trustee filed its ninth status report in accordance with the Procedures. [See D.E. No. 24231] (“Ninth Status Report” and, collectively with each of the preceding reports, the “Prior Status Reports”).

² On February 1, 2023, the Trustee filed an Amended Fifth Status Report to clarify that with respect to Avoidance Action filed against Merck, Sharp & Dohme (I.A.), LLC, Adv. Proc. 19-00276, the Trustee is represented by Continental PLLC, and its local Puerto Rico counsel is Salichs Pou & Associates, P.S.C. In all the other Avoidance Actions the Trustee is represented by Continental PLLC, and its other local counsel is Casillas, Santiago & Torres, LLC.

3. Each of the Prior Status Reports included a case update that detailed the Trustee's progress and efforts concerning undertaking informal settlement discussions and mediations in the pending Avoidance Actions.

4. The Trustee respectfully submits below its Tenth Status Report.³

TENTH STATUS REPORT

5. For the Court's reference, the Trustee respectfully notes that: (i) as with each of the Prior Status Reports, the Trustee attaches a case update to this Tenth Status Report as **Exhibit A** (the "Tenth Case Update"), and (ii) all updates within the thirty-day period since the Trustee's filing of the Ninth Status Report are emphasized using a red font in the Tenth Case Update.

Filed Avoidance Actions

6. As part of this Tenth Status Report, the Trustee summarizes certain data points contained within the attached Tenth Case Update, with a particularized emphasis on updates since the filing of the Ninth Status Report:

- a. There are fifty-two (52) Avoidance Actions that have been filed, which are subject to the Procedures.⁴
- b. The Trustee has sent each defendant in the Avoidance Actions invitations to mediate. The Trustee's efforts to schedule mediations in each of the Avoidance Actions has included hundreds of emails to

³ On November 14, 2022, the Trustee submitted an *Urgent Uncontested Omnibus Motion for Extension of Deadlines Concerning Scheduling of Mediations* [DE No. 22862 in Case No. 17- 3283] requesting that the Court extend the deadline to schedule mediation from November 21, 2022 to January 20, 2023 ("Extension Motion"). On November 15, 2022, the Court entered an Order Setting Briefing Scheduling on the Extension Motion which required that any opposition to the Extension Motion must be filed by on November 18, 2022 [DE No. 22872] ("Briefing Order"). On November 18, 2022, the Court granted the Extension Motion and extended the deadline to schedule mediation to January 20, 2023. [See D.E. No. 22890].

⁴ Pursuant to the Court's *Order Regarding Joint Status Report* [D.E. 57 in Adv. No. 19-00187], Defendant Trinity Metal Roof and Street Structure Corp. is also subject to the Procedures.

defendants and their counsel, together with numerous telephone communications.

- c. Consistent with Article V(i) of the Procedures, and excluding those cases in which a notice of dismissal has been filed, the Trustee has now agreed to a date for mediation with each Avoidance Action defendant.
- d. The Trustee has submitted forty-nine (49) Position Papers⁵ to the Avoidance Actions defendants. To the defendants that were either dismissed or involved in litigation, a Position Paper was not sent nor required. Currently, there are no additional defendants to whom the Trustee needs to provide a Position Paper.
- e. The Trustee has completed mediation with thirty-nine (39) defendants, which includes two (2) mediations since the Ninth Status Report.
- f. There remain seven (7) mediations to occur.
- g. The Trustee reports that pursuant to the Order Lifting Stay [Dkt. No. 23522 in Case No. 17-03283-LTS, the Trustee is proceeding with litigation against three (3) Avoidance Actions.

Tolled Claims

7. In addition to the Avoidance Actions Defendants, the Trustee continues to use the established mediation framework as an opportunity to engage with parties subject to tolling agreements (“Tolled Parties”), even though they are not subject to the Court’s Order implementing the Procedures. As previously reported, the Trustee has sent several invitations to the Tolled

⁵ As the Trustee noted in the Prior Status Reports, the Trustee is continuing to provide its detailed, written position regarding the pending claims in advance of mediation as they are scheduled. These Position Papers are the result of a factual and legal analysis of the issues related to each individual claim, including consideration of any defenses raised by the defendant or tolled party.

Parties for mediation, using the same process as for the Avoidance Actions defendants, although acknowledging that participation is voluntary.

8. Mindful of the confidentiality imposed by the tolling agreements, the Trustee can report the following:

- a. The Trustee has invited one hundred percent (100%) of the Tolled Parties to mediation.
- b. Ninety-four percent (94%) have agreed to mediation.
- c. Fifty percent (50%) have already scheduled mediation.
- d. Forty-four percent (44%) are in the process of scheduling mediation.
- e. Seventy-seven percent (77%) have received a Position Paper from the Trustee.
- f. The Trustee has commenced an adversary proceeding against one (1) of the Tolled Parties that declined to extend a tolling agreement. *See Drivetrain LLC v. Trinity Services I, LLC, et. al.*, Case No. 2023-00002. This defendant has now agreed to participate in the Procedures.

9. The Trustee appreciates the efforts of the defendants and their counsel who have been responsive throughout this process.

Dated this 19th day of June 2023.

Respectfully submitted by:

/s/ John Arrastia

John Arrastia, Esq. (*Pro Hac Vice*)

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Counsel to Drivetrain, LLC, in its capacity as the trustee of the Commonwealth Avoidance Actions Trust in Adv. Proc. 19-00276 only

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 19, 2023, I electronically filed the foregoing motion

with the Clerk of the Court using the CM/ECF system, which will send notification of such filing
to all appearing parties in the captioned proceeding.

/s/ John Arrastia

John Arrastia, Esq.